



**Virginia
Regulatory
Town Hall**

**Periodic Review and
Notice of Intended Regulatory Action
Agency Background Document**

Agency Name:	Board of Medicine
VAC Chapter Number:	18 VAC 85-20-10 et seq.
Regulation Title:	Regulations Governing the Practice of Medicine, Osteopathy, Podiatry and Chiropractic
Action Title:	Periodic review
Date:	2/19/02

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

Regulations are promulgated to provide educational and examination requirements for the licensure of doctors of medicine, osteopathy, podiatry and chiropractic. Provisions establish standards of professional conduct, requirements for limited or temporary licenses, and requirements for renewal or reinstatement of a license including evidence of continuing competency. Regulations implementing the physician profile system are set forth as are fees to support the regulatory and disciplinary activities of the board.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

The statutory authority for this regulation is found in § 54.1-2400 and Chapter 29 of Title 54.1 of the Code of Virginia.

Section 54.1-2400 establishes the general powers and duties of health regulatory boards including the responsibility to establish qualifications for licensure, to set fees and schedules for renewal, to establish requirements for an inactive license and to promulgate regulations, in accordance with the Administrative Process Act, which are reasonable and necessary to effectively administer the regulatory system.

§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification and licensure.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title.*
- 7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*
- 8. To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*
- 9. To take appropriate disciplinary action for violations of applicable law and regulations.*

10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*
11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*
12. *To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

In addition to general provisions in § 54.1-2400, the Board of Medicine is guided by provisions in the Medical Practice Act related to the licensure and regulation of doctors of medicine, osteopathy, podiatry and chiropractic found in Chapter 29 of Title 54.1 of the Code of Virginia. <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC5401000002900000000000>

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.

An announcement of the board's review of its regulations governing the licensure of doctors was posted on the Virginia Regulatory Townhall, sent to the Registrar of Regulations, and sent to persons on the Public Participation Guidelines mailing list for the board. Public comment was received from May 7, 2001 until July 6, 2001. During the 60-day comment period, the only

comment was received from the American Osteopathic Association, requesting amendments to update the terminology for the profession from “osteopathy” to “osteopathic medicine.”

An informal workgroup consisting of the Board president and staff that is responsible for implementation of the regulations met to conduct a preliminary review. Its recommendations were reviewed by the Legislative Committee, which reported to the full Board.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

The goals for this regulation are as follows:

1) Achieve a high level of satisfaction for application and renewal processes for all licensed practitioners.

The Board reviewed the responses of recent licensees on the Customer Service Satisfaction Surveys and determined that the application process and renewal of certification was effective in that instructions for making application are clear and easy to understand and complete. Of those that responded, 95.5% agreed or strongly agreed that the instructions were easy to understand; 90% agreed or strongly agreed that the application was processed promptly; and 97.8% agreed or strongly agreed that the forms were easy to complete. Therefore, no changes in regulations are being considered in the application process.

2) Establish a viable practitioner profile system for doctors of medicine, osteopathy and podiatry that is available to consumers.

In 2001, the practitioner profile system became operational with 30,587 licensees completing their profiles. The cost for the profiling system and related expenses in 2001 amounted to \$356,503.48. This cost includes 1 FTE for Board of Medicine staff and .5 FTE for internal DATA support, as well as the vendor’s costs for the design and development of the licensees’ data entry website, consumer website (www.vahealthprovider.com), off site call center manned with two FTEs (804-643-4337), questionnaire, verification summary and all associated mailings. It cost the Board \$11.66 per licensee that completed their profile last year.

Notifications are sent each month to new licensees informing them of their requirement to complete a questionnaire. Subsequent mailings are sent to licensees that do not respond to the initial notification.

To date, Virginia is the only state to offer their licensees the opportunity to complete their questionnaire online. Offering this option saves the Board mailing costs, staff time and makes

licensee information more readily available to consumers. Approximately 80% of the licensees that have completed their profile questionnaires chose to do so online.

The website and call center became available to the public July 24 2001. The website experienced 239,728 hits between July and December. The consumer website provides an easy way for consumers to search for licensed doctors of medicine, osteopathic medicine, and podiatry by last name, Virginia hospital affiliation, locality, or practice area.

The call center is provided for technical assistance with the website and for consumers without Internet access so that they too can obtain information on doctors either verbally, by U.S. Mail, or facsimile. Between July and December, the call center received 2,953 calls.

With the exception of the Virginia Board Notices and Orders, and licensure information, the information contained in each profile is self-reported by the practitioner. New information is added to the consumer website daily.

The 2002 General Assembly has passed Senate Bill 59 that amends the profile system to address several issues related to disclosure of investigative files and individual malpractice payments, information necessary for emergency contact with physicians and voluntary posting of participation in insurance plans. The bill requires the promulgation of emergency regulations, so the Board determined that no changes to physician profiling were necessary in its regulatory review.

3) Ensure compliance by practitioners with continuing competency requirements.

Regulations for continuing competency were finalized in December 1999, so physicians are just beginning to indicate compliance on their 2002 renewal forms. To date, there has been no random audit of licensees. While there is no measure of the level of compliance as yet, the Board expects the non-compliance to be low.

To ensure that licensees were well informed about requirements and had access to continuing competency forms, the Board provided a "Questions and Answers" sheet, included articles in the Board newsletter, used the Medical Society of Virginia and the Old Dominion Medical Society to publicize through their communications, and made presentations to continuing education providers in hospitals and group practices.

In the review of regulations, the only change recommended was consistency in the use of terminology for the continuing competency forms required by the Board.

4) License only persons who are qualified to practice.

The Board continues to rely on nationally accredited medical, podiatric and chiropractic educational programs to provide essential training and on nationally recognized licensure examinations to test for minimal competency. By the use of national standards, portability into Virginia is facilitated, and graduates from Virginia professional schools are able to be tested here and licensed elsewhere.

The Board is consistently examining any unnecessary barriers to licensure and has identified a few regulations in this review that may be amended without any reduction in the qualification of persons being licensed.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

Regulations for the licensure of physicians are mandated by law, so the Board did not consider the alternative of repealing 18 VAC 85-20-10 et seq. The amendments that are recommended are relatively minor, but will serve to clarify and simplify the requirements. The recommended amendments are intended to make compliance with regulations less burdensome and subjective.

Recommendation

Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.

The Board is recommending consideration of amendments that will eliminate unnecessary provisions of the regulations, clarify others that have raised questions for licensees or the public and specify the use of the term “active practice.”

Substance

Please detail any changes that would be implemented.

18 VAC 85-20-10. Definitions.

Amendments are recommended to delete the definition for “acupuncturist” as it is not relevant to these regulations. The change in terminology from “osteopathy” to “osteopathic medicine” would be made in this section and as it appears throughout the regulation.

18 VAC 85-20-22. Required fees.

Minor amendments are recommended to clarify terminology and to reduce the fee for a temporary permit from \$30 to \$25, the limit allowed in the Code. Amendments are recommended to clarify that the late fee is added for each unpaid renewal cycle for certain limited or temporary licenses and for reinstatement of a license expired for two years or more in medicine, osteopathy, podiatry and chiropractic.

18 VAC 85-20-30. Advertising ethics.

Amendments are recommended for consistency with federal law and to clarify the policy of the Board on advertising of fees to ensure that all patients are treated equally and equitably.

18 VAC 85-20-120. Prerequisites to licensure.

An applicant discharged from the military within the past 5 years would be required to submit a copy of discharge papers, rather than the current requirement of 10 years. The board only requires a chronology of practice for the past 5 years, so the change is consistent with current application requirements.

18 VAC 85-20-131. Requirements to practice acupuncture.

The board is recommending deletion of the provision that a podiatrist may only use acupuncture for treatment of the human foot. It would be replaced with a provision that more clearly states that acupuncture as a treatment modality should only be used as appropriate to the doctor's scope of practice as defined in § 54.1-2900 of the Code of Virginia.

18 VAC 85-20-150. Reexamination.

It is recommended that this section be repealed, as each examining body has its own requirements for reexamination and additional training.

18 VAC 85-20-210. Limited licenses to foreign medical graduates.

Regulations currently permit the waiver of the requirement for evidence of equivalency from the Educational Commission for Foreign Medical Graduates, but there has been no criteria established for such a waiver. The amended regulation would allow a designee of the Credentials Committee (normally the Executive Director and the Chair) to issue the waiver based on other evidence of medical competency and English proficiency.

18 VAC 85-20-230. Renewal of an active license.

The current regulation states that a practitioner who intends to continue his practice must renew biennially, but many doctors intend to maintain an active license without continuing in active practice. An amendment will clarify that provision.

18 VAC 85-20-235. Continued competency requirements for renewal of an active license.

For consistency and clarity, the section may be amended to designate the Continued Competency Activity and Assessment Form as the "Form."

18 VAC 85-20-240. Reinstatement of an inactive or lapsed license.

The Board may determine that provisions for the reinstatement of a lapsed license and reactivation of an inactive license should be split into two sections. Amendments also will be considered to specify a definition of "active practice" as at least 640 hours of clinical practice

within four years preceding application and to give the Board some discretion in requiring passage of additional examinations for reactivation or reinstatement.

Family Impact Statement

Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

In its preliminary analysis of the proposed regulatory action, the agency has determined that there is no potential impact on the institution of the family and family stability and no effect on family income.